

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Banerjee et al.**

Serial No. **10/087,954**

Filed: **February 27, 2002**

For: **A Bartering Protocol Language**

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Group Art Unit: **3693**

Examiner: **Jocelyn Greimel**

Commissioner for Patents  
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**35525**  
PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER

**APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on January 25, 2008.

A fee of \$510.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

### **REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

### **RELATED APPEALS AND INTERFERENCES**

This appeal has no related proceedings or interferences.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

The claims in the application are: 1-41

### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

Claims canceled: None

Claims withdrawn from consideration but not canceled: None

Claims pending: 1-41

Claims allowed: None

Claims rejected: 1-41

Claims objected to: None

### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1-41

### **STATUS OF AMENDMENTS**

An amendment to dependent claim 4 was made in the Response to Final Office Action filed on January 4, 2008. Claim 4 previously recited “the availability list.” Claim 4 was amended to recite “an availability list” to overcome the rejection of claim 4 under 35 U.S.C. 112. The Examiner indicated that the amendment correcting the 112 rejection of claim 4 would be entered in the Advisory Noticed having a notification date of February 5, 2008.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

### **A. CLAIM 1-INDEPENDENT**

The subject matter of claim 1 is directed to a method for carrying out a bartering system over a network (Specification p. 24, ll. 3-4). The method of claim 1 includes this subject matter and:

receiving a needs list having at least one needed item a user desires to acquire (Specification p. 24, ll. 5-6);

receiving a priority indication for the at least one needed item (Specification p. 24, ll. 7-9), wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item (Specification p. 18, ll. 1-3), and wherein the priority indication indicates items that are equivalent to the at least one needed item (Specification p. 4, ll. 15-20 and p. 14, ll. 17-19);

constructing the needs list with the priority indication into a barter protocol language (Specification p. 24, ll. 10-11); and

searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found (Specification p. 15, ll. 15-18 and p. 24, ll. 12-15).

### **B. CLAIM 25-INDEPENDENT**

The Subject matter of claim 25 is directed to a barter protocol language (Specification p. 1, ll. 7-11 and p. 28, ll. 2). Claim 25 includes this subject matter and:

means for specifying a needs list having at least one needed item a user desires to acquire of needed items for each one of a plurality of users (Specification p. 4, ll. 1-2, p. 11, ll. 4-14, p. 28, ll. 4-5, and Figure 1, item 10);

means for specifying an availability list of available items for each one of the plurality of users (Specification p. 4, ll. 2-5, p. 11, ll. 8-11, p. 28, ll. 7-8, and Figure 1, item 10);

means for specifying a priority indication for at least one of i) each needed item, and ii) each group of at least one item, indicating a corresponding user's priority for acquiring the needed item (Specification p. 11, ll. 11-14, p. 28, ll. 10-13, Figure 1, item 10); and

means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found (Specification p. 4, ll. 15-20, p. 28, ll. 15-19, and Figure 1, item 10).

### **C. CLAIM 32-INDEPENDENT**

The subject matter of claim 32 is directed to a computer program product that includes a computer usable medium including computer usable program code for carrying out bartering over a network (Specification p. 29, ll. 15-16). The subject matter of claim 32 includes this subject matter and:

computer usable program code for receiving a needs list having at least one needed item a user desires to acquire (Specification p. 29, ll. 17-18);

computer usable program code for receiving a priority indication for at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item (Specification p. 18, ll. 1-3, p. 29, ll. 19-21), and wherein the priority indication indicates items that are equivalent to the at least one needed item (Specification p. 4, ll. 15-20 and p. 14, ll. 17-19);

computer usable program code for constructing the needs list with the priority indication into a barter protocol language (Specification p. 29, ll. 22-23); and

computer usable program code for searching available items for a match with each of the at least one needed item based upon the priority indication an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found (Specification p. 15, ll. 15-18, p. 29, ll. 24-28).

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection to review on appeal are as follows:

### **A. GROUND OF REJECTION 1**

Whether claims 1-41 fail to be anticipated under 35 U.S.C. § 102 by Dalzell et al. (US Patent Pub. No. 2003/0204447), (hereinafter “*Dalzell*”).



## **ARGUMENT**

### **A. GROUND OF REJECTION 1 (Claims 1-41)**

The only ground of rejection is whether claims 1-41 are anticipated by *Dalzell*. This rejection is in error and should be overturned.

#### **A.1. Claims 1 and 32**

Claim 1 is a representative claim of this grouping of claims. Claim 1 is as follows:

1. A method for carrying out a bartering system over a network, comprising:
  - receiving a needs list having at least one needed item a user desires to acquire;
  - receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item;
  - constructing the needs list with the priority indication into a barter protocol language; and
  - searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found.

With respect to claim 1, the Examiner states that:

- In reference to claims 1, 25 and 32,** discloses a method, system and apparatus for a bartering system including:
- a. receiving a needs list having at least one needed item a user desires to acquire; receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item and wherein the priority indication indicates items that are equivalent to the at least one needed item;
  - b. constructing the needs list with the priority indication into a barter protocol language; and
  - c. searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower

priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found (0009-0010; 0013-0017; 0025-0026).

Final Office Action dated October 26, 2007, pages 3-4.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case each and every feature of the presently claimed invention is not identically shown in the cited reference, arranged as they are in the claims.

**A.1.i. *Dalzell* fails to teach the feature “receiving a priority indication for the at least one needed item”, as in claim 1.**

*Dalzell* does not disclose “receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item”, as is recited in claim 1. In rejecting claim 1, the Examiner cites to *Dalzell* at paragraphs 0009-0010, which state:

[0009] The present invention comprises various inventive features for facilitating user-to-user and other sales in an online marketplace, including features for assisting users in efficiently creating and locating marketplace listings. These features may be embodied individually or in an appropriate combination within a particular system.

[0010] In a preferred embodiment, the online marketplace system includes a database of information about products that may be listed by users within an online marketplace. This information typically includes product IDs, and descriptions and product images provided by manufacturers or distributors of the products. The product information in this database is viewable by end users through a browsable electronic catalog in which each product is preferably fully identified within a corresponding product detail page. Each product detail page typically includes a product image and description, and may include customer

ratings, customer and professional reviews, sales rank data, lists of related products, and/or other types of supplemental data that may assist consumers in making informed purchase decisions. This supplemental data may be maintained or generated by the operator of the marketplace system as a service to its customers. Users of the system can preferably locate specific product detail pages within the catalog by executing search queries, navigating a browse tree, or using any other navigation method supported by the particular system.

Here, *Dalzell* discloses features for assisting users in creating and locating online marketplace listings. The online marketplace system includes a database of products that may be listed by users. The information in the database of products describes particular products. The product information may include information such as product manufacturer identification numbers, descriptions of the product, and images of the products. *Dalzell* at paragraph [0011] further states:

[0011] To add a listing for selling a particular product within the marketplace, a seller may browse to the detail page for that product and then select a link for adding a listing. Because the seller fully identifies the product to be listed by browsing to the corresponding detail page, the listing may be accurately associated with a particular product ID (UPC, ISBN, etc.) without the need for the seller to supply the product ID.

Thus, when a user wants to add a listing to sell a particular product within the online marketplace, the user can search for the detail page describing the particular product and add the listing for the product. This enables the user to accurately associate the listing with the product to be sold without having to create descriptions or supply product identification numbers for the particular product. As shown above, the listing provides product information that describes or identifies the particular product. The product information does not indicate a level of desire or priority the user has in acquiring the item or items that are equivalent. Therefore, this section of *Dalzell* does not teach a priority indication.

The Examiner also cites to *Dalzell* at paragraphs 0013-0014 which is as follows:

[0013] To assist potential buyers in efficiently locating the marketplace listings for a particular product, each product detail page preferably displays or summarizes the existing marketplace listings for the corresponding product. These listings may be associated with a variety of different sellers (including individuals and small merchants), and may be for both new and used units of the product. Thus, by accessing the detail page for a particular product, a buyer can efficiently and accurately locate all of the current marketplace listings (if any) for that product, as well as

view detailed product information from the product database (typically including product images, third party product reviews, etc). The user can also preferably compare the prices, product conditions, and other parameters of the various listings, and can initiate purchasing of the product from a particular seller.

[0014] Because each marketplace listing is displayed in conjunction with the corresponding product's description within the database/catalog, there is a significantly reduced need for buyers to rely on the accuracy and completeness of product information supplied by the seller. Thus, the risk of buyers misidentifying the listed products (e.g., buying product A with the belief that it is product B), or of being unable to determine the identity or characteristics of a listed product, is significantly reduced.

This portion of *Dalzell* describes detailed product listings that include information for particular products. A buyer can locate all listings for a particular product and the detailed product information by accessing a detail page for the particular product. The detail page displays listings for the particular product. The product description information in the listings reduces the need for buyers to rely on the accuracy of information supplied by sellers, reduces the risk that the buyer will misidentify listed products, and reduces the risk that a seller will be unable to identify a listed product. In other words, *Dalzell* appears to provide pre-generated product descriptions to be used by sellers posting a particular product for sale. *Dalzell* indicates that these product descriptions are provided because they may be more accurate than a product description created from scratch by each individual seller. However, as discussed above, these product descriptions do not teach a priority indication that indicates a level of desire a user has in acquiring a particular item.

The Examiner additionally cites to *Dalzell* at paragraph 0015-0017 which states:

[0015] In one embodiment, some or all of the detail pages may also provide an option to purchase the product from a preferred retailer or "provider seller," which may be the operator of the marketplace system or a business partner of the operator. The system may thus serve as both an online store and an online marketplace, with the marketplace sellers being permitted to list their items for sale on the product detail pages or other catalog "real estate" of the store. This feature provides a cross-selling benefit by effectively driving retail customers to non-retail listings and vice versa. Further, because catalogs used by online stores tend to have detailed and accurate product descriptions of consistent format, the task of evaluating marketplace listings is made easier for buyers.

[0016] A detail page may also be configured to display any existing marketplace listings for products that are similar or related to the

product featured in the product detail page. For instance, a detail page for a particular laptop computer may, in addition to displaying any existing marketplace listings for the laptop computer itself, display any listings that exist for (a) accessories for the laptop computer, and/or (b) similar laptop computers. A table of similar or related products may be used to implement this feature.

[0017] When a particular product is currently unavailable within the online marketplace, the product's detail page may provide an option for buyers to pre-order the corresponding product from an unspecified marketplace seller. These preorder requests may be displayed within the corresponding product detail pages to entice possessors of such products to list the same within the marketplace. In one embodiment, the creator of a preorder listing is prompted to specify a minimum product condition desired and a maximum price to be paid. These parameters are preferably used by the system to automatically match preorder listings with suitable marketplace listings.

Here, *Dalzell* states that the detail page displaying listings for a particular product may be configured to display listings for related products. The detail page may also allow buyers to pre-order a product that is currently unavailable. Again, neither the detail page nor the listings displayed on the detail page provide an indication of a level of desire the user has in acquiring a particular product. Thus, *Dalzell* fails to teach “receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item” as is claimed in claim 1.

**A.1.ii. *Dalzell* fails to disclose the feature “constructing the needs list with the priority indication into a barter protocol language, as is recited in claim 1.**

*Dalzell* does not teach “constructing the needs list with the priority indication into a barter protocol language”, as is claimed in claim 1. The Examiner does not cite to any portion of *Dalzell* with specific reference to this feature. However, the Examiner does cite to *Dalzell* at paragraphs 0025-0026 with regard to claim 1 in general. The portion of *Dalzell* at paragraphs 0025-0026 states as follows:

[0025] Further, some or all of the features may be embodied within a metadata service in which a metadata server provides web page metadata to a metadata client for display to users. In such an embodiment, the entire World Wide Web, or a selected subset of the World Wide Web, may be

used as the products catalog. For instance, when a user views a web page that, based on an analysis of web page content performed by the metadata service, displays a description of a first product, the service may present to the user an option to sell a unit of the first product. If the user selects this option and creates a product or preorder listing, the service may thereafter display this product or preorder listing to other service users when such users access the same web page or any other web page that includes a description of the first product.

[0026] A system that implements the foregoing and other features will now be described with reference to the drawings. The drawings and the associated descriptions are provided to illustrate specific embodiments and features of the invention and not to limit the scope of the invention. Throughout the drawings, reference numbers are re-used to indicate correspondence between referenced elements. In addition, the first digit of each reference number indicates the figure in which the element first appears.

Here, *Dalzell* discloses that the World Wide Web, or a subset of it, may be used as a products catalog. This portion of *Dalzell* again fails to disclose a priority indicator that indicates a level of desire the user has in acquiring the item. *Dalzell* fails to teach or even mention a barter protocol language, or any other type of language in this or any other section of the reference. Moreover, *Dalzell* does not teach bartering. Instead, *Dalzell* only discloses a system that permits a user to specify a maximum price to be paid by the buyer for a particular item. See *Dalzell* at paragraph 0017, shown above. *Dalzell* does not teach bartering for particular items in any section of the reference. *Dalzell* is unconcerned with bartering. Therefore, *Dalzell* cannot be construed as teaching a barter protocol language or constructing a barter protocol language. Thus, *Dalzell* fails to disclose “constructing the needs list with the priority indication into a barter protocol language”, as in claim 1.

**A.1.iii. *Dalzell* does not teach the feature “searching available items for a match with each of the at least one needed item based upon the priority indication”, as in claim 1.**

*Dalzell* does not disclose “searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found” as claimed in claim 1. In rejecting claim 1, the Examiner cites to *Dalzell* at paragraphs 0093-0094 which states as follows:

[0093] B. Creation and Display of Preorder Listings

[0094] FIG. 3A illustrates the general form of a "preordering" page 300 that may be displayed in response to a buyer requesting to pre-order an item on a product's detail page, such as by the use of the preorder button 215 shown in FIG. 2 (although FIG. 3A corresponds to a different product than that of FIG. 2). As illustrated, the user is prompted with (1) a pulldown menu 305 to specify a minimum acceptable condition of the product (which may be "any," "acceptable," "good," "very good," or "like new" in one embodiment), (2) a box 310 in which to enter a maximum price at which the user is willing to buy the product, and (3) a pulldown menu 315 specifying the length of time the pre-order is to remain active (e.g., one week, four weeks, eight weeks, until purchased). As described below, this data is preferably used by the marketplace system to automatically match pre-order listings with marketplace listings. To assist the user in selecting a suitable maximum price, the system displays the item's list price, the price at which the item is available from the provider seller, and a suggested maximum price. Other price data, such as the average selling price of the item within the marketplace (not shown), may also be displayed. The suggested price may be based on one or more of the criteria set forth above determining suggested marketplace listing prices.

In this section of *Dalzell*, a buyer can preorder an item. The user may specify a minimum acceptable condition of the product, a maximum price to buy the product, and the length of time the pre-order will remain active. This section does not teach a priority indication that indicates a level of desire the user has in acquiring the at least one needed item and indicates items that are equivalent to the at least one needed item. Thus, this portion of *Dalzell* cannot teach matching based on the priority indication. Moreover, specifying a minimum acceptable condition and/or a maximum price is not equivalent to searching available items for a match with the at least one needed item based on the priority indication.

Finally, even if, for the sake of argument, the specified minimum acceptable condition, maximum price, and length of time could be construed to teach a priority indication, *Dalzell* fails to teach an item having a lower priority is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found. In fact, *Dalzell* only specifies a minimum condition or maximum price. *Dalzell* does not specify higher priority and lower priority indications as in claim 1.

Finally, the Examiner cites to *Dalzell* at paragraphs 0158-0160 which states as follows:

[0158] C. Preordering Process

[0159] FIG. 8 further illustrates a preorder process 800 by which a

user may preorder a product, as depicted in FIGS. 2 and 3A. As described above, the user preferably initiates this process from the product's detail page (block 805). In some embodiments, users may also or alternatively be permitted to initiate preordering from other types of catalog pages, including browse node pages and other pages that feature multiple products.

[0160] The user first specifies the minimum condition of the product (block 810). As depicted in block 815, the system may use the condition descriptor selected by the buyer to suggest a price. The price may alternatively be suggested without regard to the condition specified by the buyer, as in FIG. 3A. The user then enters the price (taking into account or ignoring the suggested price) (block 820), the maximum duration the listing is to remain active (block 825), and payment and shipping information for purchasing the product (block 830). The user may also be prompted to sign in or register (not shown).

Here, *Dalzell* describes a preorder process to preorder a product. The user specifies a minimum condition of the product, enter a price, maximum duration the listing will remain active, and payment information. Again, specifying a minimum condition, price, and duration of listing does not teach a priority indicator that indicates a level of desire the user has in acquiring the item or items that are equivalent to the needed item. Thus, *Dalzell* cannot teach matching based upon the priority indication. Moreover, *Dalzell* does not mention lower priority and higher priority items in this or any other section of the reference. Thus, *Dalzell* fails to disclose “searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found”, as in claim 1. Thus, claim 1 is not anticipated by *Dalzell*.

## **A.2. Claim 25**

Claim 25 is the only claim in this group. Claim 25 is as follows:

25. A barter protocol language comprising:
- means for specifying a needs list having at least one needed item a user desires to acquire of needed items for each one of a plurality of users;
  - means for specifying an availability list of available items for each one of the plurality of users;
  - means for specifying a priority indication for at least one of i) each needed item, and ii) each group of at least one item, indicating a



corresponding user's priority for acquiring the needed item; and  
means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found.

**A.2.i. *Dalzell* does not teach the feature “means for specifying a priority indication for at least one of i) each needed item, and ii) each group of at least one item, indicating a corresponding user's priority for acquiring the needed item”, as in claim 1.**

*Dalzell* fails to disclose “means for specifying a priority indication for at least one of i) each needed item, and ii) each group of at least one item, indicating a corresponding user's priority for acquiring the needed item”, as recited in claim 1. *Dalzell* fails to disclose a priority indication that indicates a user's priority or desire for acquiring the needed item for the reasons set forth above in section A.1.i.

**A.2.ii. *Dalzell* does not disclose the feature “means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items”, as in claim 1.**

*Dalzell* fails to teach “means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found”, as is recited in claim 1. In rejecting claim 25, the Examiner cites to *Dalzell* at paragraph 0158-0160, which is shown above. As discussed above, this section of *Dalzell* discusses a preorder process that involves specifying a minimum condition of the product, a price, and a maximum duration for the listing to remain active. *Dalzell* teaches providing this information for a particular product. If the particular product is not available, the user may preorder the particular product. See *Dalzell* at paragraph 0017, shown above. In other words, if a particular product is

unavailable, the user can preorder the product. *Dalzell* does not specify a range of near equivalency associated with a plurality of **dissimilar items** to form near equivalent items. In addition, as discussed above, *Dalzell* does not teach a priority indication that indicates whether a dissimilar item that is a near equivalent item will be satisfactory to the user in lieu of the at least one needed item.

In rejecting claim 25, the Examiner also cites to paragraph 0016, which is shown above. This section of *Dalzell* teaches displaying listings for products that are **similar** or related to the product featured in a product detail page. However, *Dalzell* does not provide listings for **dissimilar items** in this or any other section of the reference. Moreover, *Dalzell* does not specify **a range of equivalency** associated with either similar items or dissimilar items. Thus, *Dalzell* fails to teach a barter protocol language that specifies “a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found” as recited in claim 25.

### A.3. Dependent Claims 2 and 33

Claim 2 is representative of this grouping of claims. Claim 2 is as follows:

2. The method of claim 1 wherein the bartering protocol language specifies a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein the priority indication indicates whether a near equivalent item will be satisfactory to the user in lieu of the at least one needed item.

With respect to claim 2 the Examiner cites to *Dalzell* at paragraph 0158-0160, which is shown above. *Dalzell* fails to teach the feature of specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, the near equivalent items are items that are dissimilar to the at least one needed item, and the priority indication indicates

whether a near equivalent item will be satisfactory to the user in lieu of the at least one needed item for the reasons set forth above in section A.2.ii.

#### **A.4. Dependent Claims 3 and 34**

Claim 3 is representative of this grouping of claims. Claim 3 is as follows:

3. The method of claim 1 wherein searching available items is performed first within a first bartering system and performed second across a different bartering system if no match is found during the search within the first bartering system.

With regard to claim 3, the Examiner cites to paragraph 0175 which states:

[0175] The marketplace web site system may also include components for interfacing with other web sites and systems, such that users of such systems may perform the various functions described herein. For instance, the marketplace web site system may be integrated with an online services network such that users of the online services network can view the product catalog, create marketplace and preorder listings, and make marketplace purchases, using a proprietary client application.

Here, *Dalzell* describes interfacing the marketplace web site system with other web sites and systems. In this manner, a user of an online services network can make marketplace purchases on the marketplace web site system using a proprietary client application. Although *Dalzell* discloses interfacing two systems, *Dalzell* does not describe two languages or two barter protocol languages. As discussed above, *Dalzell* does not teach a single barter protocol language constructed based on a priority indication, nor does *Dalzell* disclose a second barter protocol language. Thus, *Dalzell* fails to teach the features in claims 3 and 34.

#### **A.5. Dependent claims 4 and 35**

Claim 4 is a representative claim of this grouping of claims. Claim 4 is as follows:

4. The method of claim 3 wherein the first bartering system associated with a first barter protocol language and wherein the different bartering system associated with a second barter protocol language and further comprising:  
translating, before the searching is performed across the different bartering system, the needs list from the first barter protocol language to a common barter protocol language, wherein the common barter protocol

language comprises a representation of the needs list and an availability list that is common to both the first bartering system and the different bartering system.

The Examiner cites to *Dalzell* at paragraphs 0178-0180 which states as follows:

[0178] In this embodiment, users of the metadata service download and run a metadata client component 1100, which is preferably a browser plug-in. As a user browses the World Wide Web, the metadata client 1100 running on the user's machine 505 communicates with a metadata server 1102 to retrieve information or "metadata" associated with the page and/or site being viewed. As is known in the art, this metadata may be displayed to the user in a separate window, pane, bar, or other area of the web browser 530, or may be inserted onto the web page being viewed.

[0179] The metadata client 1100 and server 1102 also include functionality for detecting that a page being viewed displays a description of a product, and for identifying that product. This may optionally be accomplished using a real time web page content analyzer 1104 that analyzes the content of a web page (to search for known product codes and descriptions) when the page is viewed by a user. The task of identifying product descriptions within web pages may additionally or alternatively be performed "off-line" using a web crawler program, in which case a table that maps URLs to products may be maintained by the system. Examples of metadata client and server architectures that provide these and other features are described in U.S. patent application Ser. Nos. 09/794,952, filed Feb. 27, 2001, and 09/820,207, filed Mar. 28, 2001, the disclosures of which are hereby incorporated by reference. Regardless of the particular product-identifying method used, the metadata client 1100 preferably reports to the metadata server 1102 information, such as the URL, about the web page currently being viewed on the computer on which the metadata client 1100 is installed.

[0180] To provide the above-described marketplace features using the World Wide Web (or a portion of the World Wide Web) as the products catalog, the metadata service preferably operates generally as follows. When a user of the service views a page that describes a product recognized by the metadata server 1102, the metadata server performs some or all of the following steps: (1) instruct the metadata client 1100 to display an option to sell a unit of the product; (2) search its own product listing database 562 to determine whether any marketplace listings exist for the product (and possibly related products); (3) if any pending marketplace or preorder listings are found in the product listings database in step (2), instruct the metadata client 1100 to display these listings in either a full or a summarized form; and (4) if no marketplace listings currently exist for the product, instruct the metadata client 1100 to display an option to preorder a unit of the product from an unspecified marketplace seller.

In this section, *Dalzell* describes using the World Wide Web as the products catalog. When a user of a metadata client views a page that describes a product recognized by the metadata server, the server instructs the client to display an option to sell a unit of the product, search its own product listing database to determine if a marketplace listing exists for the product, instruct the client to display any listings found, and if no listings are found, instruct the client to display an option to preorder the product. Here, *Dalzell* is describing using the World Wide Web as a products catalog. *Dalzell* is not describing a first bartering system and a different bartering system. As discussed above, *Dalzell* is not concerned with bartering. Moreover, assuming, for the sake of argument, that *Dalzell* is describing a first and second bartering system, *Dalzell* still does not teach priority indicators, constructing a barter protocol language from a priority indication, or a second barter protocol language.

In addition, *Dalzell* does not teach or even mention translating a needs list from a first barter protocol language to a second barter protocol language before searching is performed across the different bartering system. Instead, *Dalzell* states that a real time web page content analyzer analyzes the content of a web page to search for known product codes and descriptions when a page is viewed. *Dalzell* also mentions using a web crawler program to identify product descriptions within web pages. When the product is identified, the server instructs the client to display an option to sell a unit of the product and the server searches a product listing database for product listings for the product. *Dalzell* does not teach or even mention translating a barter protocol language into a common barter protocol language that comprises a representation of a needs list and the availability list that is common to both the first bartering system and the different bartering system. In other words, *Dalzell* identifies a product viewed on a web page and searches its own product listing database for a listing of the product in the marketplace system. A translation of a first barter protocol language to a common barter protocol language does not take place in this or any other section of the reference. Therefore, *Dalzell* fails to teach the features of claim 4.

#### A.6. Dependent claims 5 and 36

Claim 5 is a representative claim in this grouping. Claim 5 states:

5. The method of claim 1 wherein the needs list further comprises a range of near equivalent items with each near equivalent item having an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item is not found.

The Examiner cites to paragraphs 0158-0160, which is reproduced above. As discussed above, this portion of *Dalzell* teaches a preorder process in which a user specifies a minimum condition of the product. *Dalzell* does not teach a priority indication that indicates a user's desire to accept a **near equivalent** item in lieu of a given item if a match for the needed item is not found. Thus, *Dalzell* fails to teach the features of claim 5.

#### A.7. Dependent claims 8 and 39

Claim 8 is a representative claim in this grouping. Claim 8 is as follows:

8. The method of claim 3 wherein the first bartering system associated with a first barter protocol language and wherein the different bartering system associated with a second barter protocol language and further comprising:  
translating, before the searching is performed across the different bartering system, the needs list from the first barter protocol language to the second barter protocol language.

The Examiner cites to *Dalzell* at paragraph 0178-0180, which is shown above. As discussed above, this portion of *Dalzell* discloses using the World Wide Web as the products catalog. *Dalzell* does not teach or even mention translating a needs list from a first barter protocol language associated with a first bartering system to a second barter protocol language associated with a second barter protocol language. Although *Dalzell* mentions detecting a page being viewed that is displaying a description of a product, such teachings are not sufficient to disclose translating from one barter protocol language to a different barter protocol language. Thus, *Dalzell* fails to disclose the features of claim 8.

#### A.8. Dependent claim 16

Claim 16 states:

16. The method of claim 13 further comprising:  
receiving a priority indication for a group of two or more items.

The Examiner cites to *Dalzell* at paragraph 0158-160, which is shown above. As discussed above, *Dalzell* discloses a preorder process, in which a user specifies a minimum condition of a product, a price, the maximum duration the listing is to remain active, and payment and shipping information. As shown above, this does not teach a priority indicator that indicates a level of desire the user has in acquiring the at least one needed item. Moreover, *Dalzell* discloses a specified minimum condition, price, and duration of a listing for a single product. *Dalzell* does not teach a priority indication for a group of two or more items. Thus, *Dalzell* fails to disclose each and every feature of claim 16.

#### A.9. Dependent claim 41

Claim 41 states:

41. The computer program product of claim 40 wherein the at least one given needed item and the at least one given available item are dissimilar items.

As shown above, *Dalzell* teaches specifying a minimum acceptable condition of a product. See *Dalzell* at paragraph 0158-0160. *Dalzell* does not find a match for an available item in consideration for a found match for at least one given needed item where the at least one given needed item and the at least one given available item are **dissimilar** items. Thus, *Dalzell* fails to teach each and every feature of claim 41.

**B. CONCLUSION**

As shown above, the Examiner has failed to state valid rejections against any of the claims. Therefore, Applicants request that the Board of Patent Appeals and Interferences reverse the rejections. Additionally, Applicants request that the Board direct the Examiner to allow the claims.

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## **CLAIMS APPENDIX**

The text of the claims involved in the appeal is as follows:

1. A method for carrying out a bartering system over a network, comprising:  
receiving a needs list having at least one needed item a user desires to acquire;  
receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item;  
constructing the needs list with the priority indication into a barter protocol language; and  
searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found.
2. The method of claim 1 wherein the bartering protocol language specifies a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein the priority indication indicates whether a near equivalent item will be satisfactory to the user in lieu of the at least one needed item.
3. The method of claim 1 wherein searching available items is performed first within a first bartering system and performed second across a different bartering system if no match is found during the search within the first bartering system.

4. The method of claim 3 wherein the first bartering system associated with a first barter protocol language and wherein the different bartering system associated with a second barter protocol language and further comprising:

translating, before the searching is performed across the different bartering system, the needs list from the first barter protocol language to a common barter protocol language, wherein the common barter protocol language comprises a representation of the needs list and an availability list that is common to both the first bartering system and the different bartering system.

5. The method of claim 1 wherein the needs list further comprises a range of near equivalent items with each near equivalent item having an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item is not found.

6. The method of claim 1 wherein the match is a direct match having a one to one correspondence.

7. The method of claim 1 wherein the match is a chained association involving the needs list and availability lists of a plurality of users.

8. The method of claim 3 wherein the first bartering system associated with a first barter protocol language and wherein the different bartering system associated with a second barter protocol language and further comprising:

translating, before the searching is performed across the different bartering system, the needs list from the first barter protocol language to the second barter protocol language.

9. The method of claim 2 further comprising receiving a second priority indication for a given available item indicating a user's desire to use the given available item to carry out a bartering transaction.

10. The method of claim 9 wherein the second priority indication is indicated by a monetary value that the user is willing to accept for the given available item.

11. The method of claim 1 further comprising receiving a monetary value associated with each of the at least one needed item.

12. The method of claim 11 further comprising receiving a monetary value priority indication, associated with the received monetary value, wherein the monetary value priority indication indicates a user's willingness to vary a payment value for a given needed item from the monetary value.

13. The method of claim 2 further comprising receiving monetary value associated with each of the at least one available item.

14. The method of claim 13 further comprising receiving a monetary value priority indication, associated with the received monetary value, wherein the monetary value priority

indication indicates a user's willingness to vary a received value for a given available item from the monetary value.

15. The method of claim 11 wherein the monetary value is received from data provided by a rating agency.

16. The method of claim 13 further comprising:  
receiving a priority indication for a group of two or more items.

17. The method of claim 1 wherein the barter protocol language is in XML.

18. The method of claim 1 wherein each of the at least one needed item can be at least one of a physical item and a nonphysical item.

19. The method of claim 18 wherein each physical item and each nonphysical item has a corresponding representation mechanism within the barter protocol language.

20. The method of claim 18 wherein the nonphysical item represents a needed service.

21. The method of claim 2 wherein each of the at least one available item can be at least one of a physical item and a nonphysical item.

22. The method of claim 21 wherein the nonphysical item represents an available service.

23. The method of claim 2 further comprising indicating equivalency of at least one available item with at least one needed item.

24. The method of claim 2 further comprising finding a match for at least one given available item in consideration for a found match for at least one given needed item, wherein the at least one available item, and the at least one needed item are represented in terms of equivalency.

25. A barter protocol language comprising:

means for specifying a needs list having at least one needed item a user desires to acquire of needed items for each one of a plurality of users;

means for specifying an availability list of available items for each one of the plurality of users;

means for specifying a priority indication for at least one of i) each needed item, and ii) each group of at least one item, indicating a corresponding user's priority for acquiring the needed item; and

means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found.

26. The barter protocol language of claim 25 wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found.

27. The barter protocol language of claim 25 wherein the language is one of a markup language.

28. The barter protocol language of claim 27 wherein the mark up language is XML.

29. The barter protocol language of claim 25 wherein each needed item and each available item has a corresponding representation mechanism.

30. The barter protocol language of claim 25 wherein the needed items and available items can be physical items and nonphysical items.

31. The barter protocol language of claim 25 wherein the nonphysical items are representative of services.

32. A computer program product comprising:

A computer usable medium including computer usable program code for carrying out bartering over a network, said computer program product comprising:

computer usable program code for receiving a needs list having at least one needed item a user desires to acquire;

computer usable program code for receiving a priority indication for at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item;

computer usable program code for constructing the needs list with the priority indication into a barter protocol language; and

computer usable program code for searching available items for a match with each of the at least one needed item based upon the priority indication an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found.

33. The computer program product of claim 32 wherein the bartering protocol language specifies a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein the priority indication indicates whether a near equivalent item will be satisfactory to the user in lieu of the at least one needed item.

34. The computer program product of claim 32 further comprising:

computer usable program code for searching available items is performed first within a first bartering system and performed second across a different bartering system if no match is found during the search within the first bartering system.

35. The computer program product of claim 34 wherein the first bartering system associated with a first barter protocol language and wherein the different bartering system associated with a second barter protocol language and further comprising:

computer usable program code for translating, before the searching is performed across the different bartering system, the needed items from the first barter protocol language to a common barter protocol language, wherein the common barter protocol language comprises a representation of the needs list and the availability list that is common to both the first bartering system and the different bartering system.

36. The computer program product of claim 32 wherein the needs list further comprises a range of near equivalent items with each near equivalent item having an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item is not found.

37. The computer program product of claim 32 wherein the match is a direct match having a one to one correspondence.

38. The computer program product of claim 32 wherein the match is a chained association involving the needs list and availability lists of a plurality of users.

39. The computer program product of claim 34 further comprising  
computer usable program code for translating, before the searching is performed across the different bartering system, the needs list from the first barter protocol language to the second



barter protocol language and enabling an indication of equivalency of at least one available item with the at least one needed item.

40. The computer program product of claim 33 further comprising:

computer usable program code for searching further comprises means for finding a match for at least one given available item in consideration for a found match for at least one given needed item, wherein the at least one available item, and the at least one needed item are represented in terms of equivalency.

41. The computer program product of claim 40 wherein the at least one given needed item and the at least one given available item are dissimilar items.

## **EVIDENCE APPENDIX**

This appeal brief presents no additional evidence.

## **RELATED PROCEEDINGS APPENDIX**

This appeal has no related proceedings.